*** THE HON'BLE MR JUSTICE RAMESH RANGANATHAN**

+ WRIT PETITION NOs 29418 & 28763 of 1997

\-

% 18-10-2005

W.P.No.29418 of 1997

Y.Sangameswar Rao Petitioner

Vs.

$ State Bank of Hyderabad, Hyderabad

and three others Respondent

! Counsel for the Petitioner: Mr.G.Ramachandra Rao

^ Counsel for respondents: Sri V.Jogayya Sarma

< Gist:

>Head Note

?

1AIR 1984 SC 505

2AIR 1985 SC 504

3 1985(2) LLJ 296

4 AIR 1992 SC 2188

5 AIR 1976 SC 2062

6 (1984) 3 SCC 316

7 (1995) 6 SCC 749

[8] (1997) 3 SCC 387

[9] (1995) 6 SCC 237

[10] AIR 1966 SC 1678

[11](1996) 3 SCC 364

[12](1980) 4 SCC 379

[13](1999) 6 SCC 237

[14](2000) 7 SCC 529

[15](1969) 3 SCC 372

[16](1995) 4 SCC (Supp) 235

[17]AIR 1991 SC 2010

[18] 1998(2) LLJ 241

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

–

WRIT PETITION Nos 29418 and 28763 of 1997

–

COMMON JUDGMENT:

Writ Petition No.29418 of 1997 is filed to quash the proceeding of the 3rd respondent dated 31-10-1992 confirmed, in appeal, by the order of the 2nd respondent dated 15/18.3.1993. The 3rd respondent, vide proceedings dated 31-10-1992, had imposed stoppage of five increments forever on the petitioner and the appeal preferred by the petitioner was dismissed and the punishment imposed on him was confirmed.

In **W.P.28763 of 1997,** the proceedings of the 2nd respondent, dated 21-5-

1997, whereby the petitioner was informed that the result of the sealed cover, containing the findings in respect of his suitability or otherwise for promotion to Officers' Cadre in JMGS-I had been annulled consequent to the punishment, of stoppage of five increments forever, imposed on him vide disciplinary authority's order dated 31-10-1992 and that the results of his promotion cannot be given effect to in terms of Clause VI of the sealed cover procedure prescribed in circular No.PER/71 of 1983 dated 7.9.1993, is impugned.

Since the punishment imposed vide proceedings dated 31.10.1992, which forms the basis for his being denied promotion to the post of Officer JMGS-I, is challenged in W.P.No.29418 of 1997, it is this writ petition which shall be first be taken up for consideration.

Facts, to the extent necessary for this writ petition, are that the petitioner was directly recruited as Cashier-cum-Clerk in the year 1982 by the Regional Recruitment Board of the State Bank of Hyderabad. He was initially appointed in the Dubbak Branch, Medak District, and successfully completed his probation. The 4th respondent, issued memo dated 30-9-1988, alleging that the petitioner had drawn salary upto 31-7-1982 from A.P.S.R.T.C., Kamareddy Depot although he had joined the service of the Bank on 1-7-1982 itself and had drawn salary thereafter from the State Bank of Hyderabad. It was also alleged that the petitioner had joined the Bank service without tendering his resignation to APSRTC. The petitioner submitted his explanation thereto on 25-10-1988. The 4th respondent issued another memo dated 16-1-1991, to which the petitioner is said to have submitted his explanation on 2-3-1991. A charge sheet was issued to the petitioner on 10-6-1991 framing three charges for acts of misconduct alleged to have been committed by the petitioner while he was working as Cashier-cum-Clerk at Dubbak Branch, Medak District. It is the petitioner's case that he was not furnished with a copy of the complaint based on which the charges were framed against him. An enquiry was ordered and proceedings were held on 11-11-1991, 5-12-1991, 24-12-1991 and 5-2-1992 to enquire into the charges levelled against the petitioner. During the enquiry, one witness Sri K.Srihari, Deputy Superintendent (Personnel), APSRTC, Kamareddy Depot was examined and four documents were marked as exhibits. In his defence, the petitioner's statement was recorded. Petitioner contends that copies of documents, relied upon by the enquiry officer and marked as exhibits, were not furnished to him and that soon after the enquiry was completed the presenting

Officer had submitted his brief and he had submitted his defence brief on 22-6-1992. The enquiry officer, in his report, held that the petitioner had accepted charge No.1, charge No.2 was partly established and charge No.3 was not established. On the basis of the enquiry report, wherein the petitioner was held guilty of the charges leveled against him, a show cause notice dated 22-9-1992 was issued proposing to impose penalty of stoppage of five increments forever and calling upon the petitioner to show cause against the proposed punishment. Petitioner submitted his reply to the show cause notice on 9-10-1992, consequent to which the impugned proceedings dated 31-10-1992 was issued imposing the punishment of stoppage of five increments forever.

Sri G.Ramachandra Rao, learned counsel for the petitioner, would submit that the charges leveled against the petitioner do not amount to misconduct much less gross or minor misconduct within the meaning of paras 19.5 and 19.7 of the Bipartite Settlement. Learned counsel would submit that acts and omissions on the part of an employee, amounting to gross misconduct, are enumerated in para 19.5 of the Bipartite Settlement and that charges 1 and 2 levelled against the petitioner do not fall under any of the acts of misconduct enumerated in said paragraphs of the Bipartite Settlement. Learned counsel would contend that even if the petitioner had admitted charge No.1, charge No.2 could not be termed as a misconduct warranting disciplinary action and imposition of major penalty. Learned counsel would submit that the petitioner had not drawn any excess amount from the 1st respondent – bank or claimed any excess amount for the services rendered by him as a Cashier-cum-Clerk from 1-7-1982 and even if he had drawn any excess amount from the previous employer, it is only the previous employer that could have any grievance against him and not the respondent – bank. Learned counsel would contend that the respondent – bank is not empowered to take disciplinary action on the basis of allegations made against the petitioner under Charges No. 1 & 2 as they do not constitute misconduct, that the petitioner was denied reasonable opportunity of defending himself inasmuch the copy of the complaint or report on which the charges were based were not furnished to the petitioner, and that the letter dated 1-9-1982, issued by the Depot Manager of APSRTC, Kamareddy Depot, referred to in the proceedings dated 16-1-1992, was not furnished to the petitioner despite his specific request that a copy thereof be furnished. Learned Counsel would also contend that, while the enquiry officer had relied on four documents in arriving at his findings, copies thereof were

neither furnished to the petitioner nor were they shown to him before they were taken on record as exhibits. Failure to furnish copies of these documents is contended as violating principles of natural justice and that the punishment imposed, on the basis of the said charges and finding thereon, is vitiated. Learned Counsel would submit that the petitioner was prejudiced on account of the long delay in issuing the charge memo, nine years after the alleged incident which resulted in the petitioner not being able to defend himself effectively. Learned Counsel would also contend that the punishment of stoppage of five increments, imposed on the petitioner, is contrary to para 19.6 of the Bipartite Settlement and that the 3rd respondent has no power to withhold or stop increments forever having the effect of stoppage of increments during the rest of the petitioner's service, that the petitioner cannot be severely penalized for failure to fill columns 16 and 17 of his application inasmuch as no loss was caused to the respondent – bank for the petitioner's failure to do so, and that the punishment of stoppage of five increments forever is grossly disproportionate to the misconduct and is liable to be set aside.

Learned counsel would place reliance on **M/s Glaxo Laboratories (I) Ltd. v. Presiding Officer, Labour Court, Meerut**; **Rasiklal Vaghajibai Patel v. Ahmedabad Municipal Corporation**; and **Natavarbhai S.Makwana v. Union of Bank of India** in support of his submission that since the first charge is not enumerated as a misconduct, under the bipartite settlement, it is not open to the employer to fish out some conduct as misconduct and to punish the employee thereupon.

Before examining the law laid down in judgments aforementioned, it is necessary to refer to the relevant provisions of the bipartite settlement. Para 19.5 defines "gross misconduct" and under para 19.6, an employee found guilty of such misconduct is liable to be imposed punishments referred to therein. The expression "minor misconduct" is enumerated in Para 19.7 of the bipartite settlement and under 19.8 an employee found guilty of minor misconduct is liable to be imposed punishment prescribed in the said para.

Paras 19.5 to 19.8 read as under:

> 5. By the expression "gross misconduct" shall be meant any of the following acts and omissions on the part of an employee.
>
> a. engaging in any trade or business outside the scope of his duties except with the written permission of the bank;

b. unauthorized disclosure of information regarding the affairs of the bank or any of its customers or any other person connected with the business of the bank which is confidential or the disclosure of which is likely to be prejudicial to the interests of the bank;

c. drunkenness or riotous or disorderly or indecent behaviour on the premises of the bank;

d. willful damage or attempt to cause damage to the property of the bank or any of its customers;

e. willful insubordination or disobedience of any lawful and reasonable order of the management or of a superior;

f. habitual doing of any act which amounts to “minor misconduct” as defined below, “habitual” meaning a course of action taken or persisted in notwithstanding that at least on three previous occasions censure or warnings have been administered or an adverse remark has been entered against him;

g. willful slowing down in performance of work;

h. gambling or betting on the premises of the bank;

i. speculation in stocks, shares, securities or any commodity whether on his account or that of any other persons;

j. doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss;

k. giving or taking a bribe or illegal gratification from a customer or an employee of the bank;

l. abetment or instigation of any of the acts or omissions above-mentioned.

19.6. An employee found guilty of gross misconduct may:

(a) be dismissed without notice; or

(b) be warned or censured, or have an adverse remark entered against him; or

(c) be fined; or

(d) have his increment stopped; or

(e) have his misconduct condoned and be merely discharged.

7. By the expression “minor Misconduct” shall be meant any of the following acts and omissions on the part of an employee:

a. absence without leave or overstaying sanctioned leave without sufficient

grounds;

b. unpunctual or irregular attendance;

c. neglect of work, negligence in performing duties;

d. breach of any rule of business of the bank or instruction for the running of any department;

e. committing nuisance on the premises of the bank;

f. entering or leaving the premises of the bank except by an entrance provided for the purpose;

g. attempt to collect or collecting money within the premises of the bank without the previous permission of the management or except as allowed by any rule or law for the time being in force;

h. holding or attempting to hold or attending any meeting on the premises of the bank without the previous permission of the management or except in accordance with the provisions of any rule or law for the time being in force;

i. canvassing for union membership or collection of union dues of subscriptions within the premises of the bank without the previous permission of the management or except in accordance with the provisions of any rule or law for the time being in force;

j. failing to show proper consideration, courtesy or attention towards officers, customers or other employees of the bank, unseemly or unsatisfactory behaviour while on duty;

k. marked disregard of ordinary requirements of decency and cleanliness in person or dress;

l. incurring debts to an extent considered by the management as excessive.

19.8. An employee found guilty of minor misconduct may:

(a) be warned or censured; or

(b) have an adverse remark entered against him; or

(c) have his is increment stopped for a period not longer than six months. “

To examine the question as to whether the charges leveled against the petitioner would constitute gross misconduct under Para 19.5 of the Bipartite Settlements it is necessary to refer to the Charges leveled against the petitioner, which are as under:

“1. At the time of applying for the Bank Job, you did not fill up column No 16 & 17 despite a note ‘All columns must be filled in’ regarding particulars of employment and left them blank in the Bio-data form, submitted to the Regional Recruitment Board, State Bank Group,

Hyderabad Circle on 16.01.1982. You suppressed the fact that you were employed in A.P.S.R.T.C., Kamareddy Depot as mechanic E 88053.

2. It is alleged that while working as cashier clerk at Dubbak branch from 01.07.1982 you drew the salary and allowances from the Bank for the month of July and August, 1982 although you were still on rolls with APSTRC, Kamareddy Depot, where you also drew the salary for July and August, 1982.

3. It is alleged that while working as Cashier-Clerk at our Dubbak branch during the period 23.07.1982 to 10.08.1982, you submitted a Medical Certificate/Application for sick leave to APSRTC for the period 23.07.1982 to 10.08.1982."

In so far as the first charge is concerned, it is not in dispute that the petitioner, in his bio data form submitted along with his application for appointment in the State Bank of Hyderabad, had left columns 16 & 17 blank and had thereby, suppressed the fact that he had earlier been employed as a Mechanic (E.88053) at APSRTC, Kamareddy Depot. While the aforesaid facts are not disputed, it is contended that this act of misconduct is not among those enumerated in para 19.5 and 19.7 of Bipartite settlement and as such no disciplinary action could have been initiated against the petitioner nor could he have been imposed the punishment of stoppage of five increments forever. With regards the second charge, the contention is that even if the charge is held to be proved, since the allegation is that the petitioner had drawn salary from APSRTC, it is for the APSRTC to take disciplinary action and not the respondent – bank herein.

Now the judgments relied upon by Sri G.Ramachandra Rao, learned counsel for the petitioner. In **Glaxo Laboratories** (1 supra), the charge related to certain striking workers manhandling those who intended to continue discharging their duties. The incident of manhandling was alleged to have taken place outside the factory premises. The Supreme Court held, that if the workman was involved in a riot or involved in fighting somewhere far away from the premises of the establishment, it had no casual connection with his performance of duty under the industrial establishment in which he was employed, since the provisions in the certified standing orders, enumerating acts of misconduct, are penal in nature they have to be construed strictly and not extended beyond their clear limit, and that the expression "committed within the premises of the establishment or in the vicinity thereof", were words of limitation and had to be construed strictly.

In **Rasik Lal** (2 supra), the employee while submitting his application to the post of Head Clerk in the Ahmedabad Municipal Corporation had, in his biodata form, stated that he had resigned from service of the Sales Tax Department due to transfer, when in fact, he had been removed from service for demanding illegal gratification. The Division Bench of the Gujarat High Court, while dismissing the petition, had held that even if the allegation of misconduct did not constitute misconduct among those enumerated in the relevant service regulations, yet the employer could attribute what would, otherwise per se, be a misconduct though not enumerated and punish the employee for the same. The Supreme Court held that unless either in the certified standing orders or in the service regulations an act or omission is prescribed as a misconduct, it is not open to the employer to fish out some conduct as misconduct and punish the workman even though the alleged misconduct would not be comprehended in any of the enumerated misconduct. While holding that the Gujarat High Court had fallen in error, the Supreme court, however, taking note of the fact that the petitioner therein was guilty of suppression of material fact, which would weigh with any employer in giving him employment, held that it was not a case which merited consideration under Article 136 of the Constitution of India. Consequently, the special leave petition filed by the employee was dismissed.

In **Natavarbhai S. Makwana** (3 supra), the employee was charge sheeted for irregular attendance, unauthorized absence, for making unwarranted complaints and for instigating another employee to threaten the person in charge of the staff college training center. The Gujarat High Court held that the charge relating to intimidation to cause physical harm to superiors was not among those specifically enumerated as misconduct. While holding that an employer had to establish misconduct, the Gujarat High Court held that, an ordinary admission alone, of the delinquent officer, could not be regarded as sufficient to prove the misconduct as well as the facts constituting misconduct.

The word “misconduct” though not capable of precise definition, its reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour, unlawful behaviour, willful in character; a forbidden act, a transgression of established and definite rules of action or code of conduct but not mere errors of judgment, carelessness or negligence in performance

of duty. The act complained of must bear forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. (**State of Punjab v. Ram Singh Ex. Constable**)

Certified standing orders/rules and regulations/bipartite settlements only describe certain cases of misconduct and they cannot be exhaustive of all species of misconduct which an employee may commit. Even though a given conduct may not come within the specific terms of misconduct in the special facts of a case, it may not be possible to condone certain acts for which the employer may have to take appropriate action. Ordinarily the standing orders/rules may limit the concept of misconduct but not invariably so (**M.S.Dhantawal v. Hindustan Motors**)

In **A.L.Kalra v. Project & Equipment Corporation**, the Supreme Court held that unless a misconduct was specifically defined as such no disciplinary action could be initiated against the employee. This judgment in **A.L.Kalra** (6 supra) was distinguished in **B.C.Chaturvedi v. Union of India**, wherein the Supreme Court held that in **A.L.Kalra** (6 supra) since Rule 5 of the rules defined specific misconduct, the question was whether in the general norm of behaviour, the omission to return the advance amount, which was not specifically defined would constitute a misconduct and in that grey area it was not amenable to disciplinary action unless the act is constituted to be a misconduct under Rule 5 of the said rules. In **B.C.Chaturvedi** (7 supra), the Supreme Court held that a public servant in possession of assets disproportionate to his known sources of income, which he has not satisfactorily accounted for, commits a misconduct amenable to disciplinary action under the CCS (CCA) Rules and Conduct Rules. Similarly in **Secretary to Government v. A.C.J.Britto**, the Supreme Court held that **A.L.Kalra** (6 supra) did not lay down as a general principle that if an act is not specified by rules to be a misconduct then it cannot be regarded as such and an employee cannot be punished for committing such an act. In **Palghat BPL & PSP Thozhilali Union v. BPL India Ltd** the Supreme Court held that the question as to what amounts to misconduct is a question of fact to be decided with reference to the facts, the situation in which the act is alleged to have been committed and the attendant circumstances leading thereto.

In the present case, the fact, that the petitioner had suppressed his earlier employment with APSRTC, is not in dispute. Even in the general norm of behaviour, as held in **A.L.Kalra** (6 supra) and **B.C.Chaturvedi** (7 supra), *supressio veri* and *suggestio falsi* would undoubtedly constitute misconduct. In **Rasiklal** (2 supra) the Supreme Court refused to interfere with the punishment imposed on an employee on his being found guilty of suppression of material fact. While "suppression of material fact" is not specifically enumerated amongst the acts of "gross misconduct" in para 19.5 of the Bipartite settlement, the charge sheet refers to para 19.5(j) of the Bipartite settlement which provides that "doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss" would amount to gross misconduct. Would this act "of suppression of fact of his previous employment" not constitute an act prejudicial to the interest of the Bank?. The answer has necessarily to be in the affirmative and such an act of misconduct would undoubtedly fall within the expression "gross misconduct" under para 19.5(j) of the Bipartite settlement. As held in **Glaxo Laboratories** (1 supra), while the provisions of para 19.5 of bipartite settlement would undoubtedly require strict interpretation, since it is a penal provision based on which an employee, if found guilty, is liable to be imposed the penalties specified in para 19.6, even on a strict construction of Para 19.5(j), the act of misconduct alleged against the petitioner would undoubtedly fall within the expression "acts prejudicial to the interests of the bank". A person who has suppressed his previous employment, while seeking employment in a public institution like the respondent – bank, has certainly committed an act which is prejudicial to the interests of the bank and has thereby committed an act of "gross misconduct" under para 19.5 of the bipartite settlement. As held in **Rasiklal** (2 supra), since the petitioner is admittedly guilty of suppression of material facts which would weigh with any employer in giving him employment, it is certainly not a case which would merit exercise of discretion in his favour under Article 226 of the Constitution of India.

Sri G.Ramachandra Rao, learned counsel for the petitioner, would further submit that even if the charges leveled, are held to be gross misconduct under para 19.5 (j) of the bipartite settlement, the petitioner could not have been imposed the punishment of stoppage of five increments forever, which is not among the penalties specified in para 19.6. According to the learned counsel, while para 19.8 (c), empowers the employer to impose, for proved minor misconduct, punishment of

stoppage of increments on an employee for a period not longer than six months, under para 19.6(d), an employee found guilty of gross misconduct may have his increment stopped. Learned counsel would submit that since the word used in para 19.6 (d) is **"increment"** and not **"increments"**, (singular and not plural), the punishment which could have been imposed is to stop increment of an employee only for a period of one year. Learned counsel would submit that, in any event, stoppage of five increments cannot be forever since no such penalty is provided in para 19.6 of the bipartite settlement. The expression "have his increment stopped" in para 19.6 cannot be construed in the manner suggested by, Sri G.Ramachandra Rao, learned counsel for the petitioner. The word "Increment", referred to in para 19.6, would mean future increments and cannot be restricted to merely one increment, when the punishment imposed is for gross misconduct. The meaning of the singular word must, in the context, extend to include the plural. Para 19.6(a) empowers the employer to dismiss an employee found guilty of gross misconduct. A distinction has been made in bipartite settlement between gross and minor misconduct. While the punishments prescribed for gross misconduct are severe those prescribed for minor misconduct are less harsh. When, among the punishments liable to be imposed for minor misconduct, under Para 19.8(c), is stoppage of increments for a period of not longer than six months, the words "having his increment stopped" in para 19.6(d) would necessarily mean stoppage of increments for a period in excess of six months. While a strict construction is no doubt required to be placed on penal provisions, it is not, normally, for courts to supply words thereto. The contention of Sri G.Ramachandra Rao, learned counsel for the petitioner, if accepted, would require the words "for a period of one year" to be added to the expression "have his increment stopped" in para 19.6(d) of the bipartite settlement. A construction which requires for its support addition of words has to be avoided (**Shyam Kishori Devi v. Pata Municipal Corporation**)

No punishment can be imposed forever as any punishment imposed has to be for a specified period. In effect, the punishment of stoppage of five increments is with cumulative effect. Stoppage of increments with cumulative effect would result in deferment of the said increment indefinitely. Since stoppage of increment with cumulative effect would result in the number of increments specified in the order of punishment being postponed forever, in the present case, stoppage of five increments forever, in effect, would amount to stoppage of five increments with cumulative effect which is a punishment an employer is entitled to impose on an

employee, for proved acts of gross misconduct, under para 19.5 of the bipartite settlement.

Sri G.Ramachandra Rao, learned counsel for the petitioner, would contend that the petitioner was denied reasonable opportunity of being heard inasmuch the complaint letter dated 1-9-1982, issued by the Depot Manager, APSRTC, Kamareddy, referred to in proceedings dated 16-1-1992 was not furnished to him. This letter dated 1-9-1992 is the letter from the Depot Manager informing the respondent – bank of the petitioner having earlier been employed with APSRTC. It is no doubt true that documents on which reliance is placed in support of the charge, is required to be furnished and failure to do, would be in violation of principles of natural justice. The question which would, however, fall for consideration is whether failure to observe the rules of natural justice has caused prejudice to the employee concerned. Not furnishing a copy of the document, relied upon in support of a charge, is violative of a facet of the rules of natural justice and the validity of the order imposing punishment has to be tested on the touchstone of prejudice. (**State Bank of Patila v. S.K.Sharma**)It is the admitted case of the petitioner herein that he had worked with the APSRTC which fact was suppressed in the bio-data form furnished along with the petitioner's application, seeking employment with the respondent – bank. When facts are admitted failure to comply with the rules of natural justice, including non-furnishing of a copy of the complaint, cannot be said to have caused any prejudice to the employee concerned. On admitted or undisputable facts, this Court would not issue its Writ to compel observance of natural justice, not because it is not necessary to observe natural justice, but because Courts do not issue futile Writs.(**S.L.Kapoor v. Jagmohan; M.C.Mehta v. Union of India; Aligarh Muslim University v. Mansoor Ali Khan**) This contention of Sri G.Ramachandra Rao is also liable to rejected.

The contention regarding delay of nine years in issuing the charge sheet from the date of the alleged incident of misconduct need not detain us, since no prejudice can be said to have been caused thereby to the petitioner, more so when charge No.1 is admitted by him. Mere delay in issuing charge sheet, without anything more, would not vitiate enquiry proceedings (**TELCO v. S.C. Prasad**; **Union of India v. Raj Kishore Parija**; and **B.Satyanarayana v. State Bank of India (W.A.No.394 of 1989 dated 7-3-1989)**

The last submission of Sri G.Ramachandra Rao, learned counsel for the petitioner, is that the punishment imposed is grossly disproportionate to the charges held proved against the employee. The charge held proved against the petitioner is one of suppression of material facts regarding his previous employment with the APSRTC while seeking employment in the State Bank of Hyderabad. The punishment imposed is of stoppage of five increments forever which, in effect, means stoppage of five increments with cumulative effect. It is well settled that the nature and extent of punishment imposed on an employee is in the discretion of the employer and while examining the quantum of punishment imposed it is not for this Court, under Article 226 of the Constitution of India, to sit in judgment over the wisdom of the employer in imposing the punishment. It is only in rare cases where the punishment imposed is one which could not have been imposed at all or is such as would shock the conscience of this Court, would any interference be called for. The punishment imposed, in the present case, of stoppage of five increments with cumulative effect, for proved misconduct of suppression of material facts, cannot be said to be a punishment which shocks the conscience of this Court. The quantum of punishment imposed on the petitioner does not, therefore, call for interference. W.P.No.29418 of 1997 fails and is accordingly dismissed.

Now the question of denial of promotion which is the subject matter of challenge in W.P.No.28763 of 1997. As a Clerk-cum-Cashier, of the State Bank of Hyderabad, the service conditions of the petitioner are governed by Bipartite settlements, entered into between the Indian Banks Association and the All India Bank Employees Association, and several circulars issued by the 1st respondent, from time to time.

The 2nd respondent issued Circular dated 12-6-1996 proposing to conduct a written test for promotion, from Clerk to Officer's Cadre in JMGS-I, for filling up vacancies identified for the year 1996-97. Under the said notification 137 current vacancies and 34 backlog vacancies were sought to be filled up. From out of the 137 vacancies 21 were reserved for candidates belonging to the Scheduled Castes, 10 for the Scheduled Tribes and the remaining 106 were to be filled up by open competition. The eligibility criteria prescribed for promotion was that the applicant should be an employee of the bank appointed on or before 1-1-1981 and should not have crossed the age of 55 years as on 1-4-1996. The eligibility criteria prescribed for Scheduled Caste and Scheduled Tribe candidates was that the employee should

have been appointed before 1-1-1987 and 1-4-1991 respectively and should not be more than 55 years of age as on 1-4-1996. Petitioner submitted his application, in the prescribed form, under the quota reserved for the Scheduled Castes. The Second respondent, vide proceedings dated 19-7-1996, sent the petitioner for pre-promotion training from 30-7-1996 to 3-8-1996. On completion of the pre-promotion training, the petitioner appeared in the written test held on 11-8-1996 and on his successfully passing the written test, proceedings dated 24-10-1996 were issued wherein 247 candidates, including the petitioner, were declared to have qualified in written examination. The Petitioner appeared for the viva-voce test on 20-11-1996. The 2nd respondent issued proceedings dated 21-11-1996 wherein the list of employees selected for promotion, to Officers Cadre in JMGS I, was issued. Under the said proceedings, several employees junior to the petitioner were promoted to officer cadre in JMGS-I. The 2nd respondent, issued proceedings dated 29-11-1996, informing the petitioner that the findings in respect of his suitability for promotion, to Officer's Cadre in JMGS-I, had been placed in a sealed cover in terms of the Circular dated 7-9-1983. Subsequently the impugned order dated 21-5-1997 was issued informing the petitioner that the sealed cover was annulled. It is this order, dated 21-5-1997, which is subjected to challenge in this writ petition.

Sri G.Ramachandra Rao, learned counsel for the petitioner, would refer to Circular No.PER/77 of 1983 dated 7-9-1983 which prescribes the guide lines for following the "Sealed Cover Procedure" in case of award staff and supervisory staff. The Sealed cover procedure is required to be followed only for employees under suspension or whose conduct is under investigation, and not in cases where no disciplinary proceedings had been initiated or where disciplinary proceedings are not in progress. Learned Counsel would contend that on the dates, when the petitioner appeared for the written test and viva-voce test and when the Departmental promotion committee considered the petitioner's case for promotion, there was no disciplinary proceedings pending against the petitioner or in contemplation and since the disciplinary proceedings, initiated in 1988, ended in punishment being imposed on 31-10-1992, and only the appeal preferred by the petitioner, against the order of punishment dated 31-10-1992, was pending, mere pendency of an appeal would not empower the respondents to apply the sealed cover procedure and that the petitioner ought to have been promoted along with his

juniors. Learned Counsel would contend that the impugned proceedings dated 21-5-1997 are also contrary to the sealed cover procedure prescribed in Circular dated 7-9-1983. Clauses 7 and 8, of the said Circular, are relied upon to contend that since the punishment of stoppage of five increments was to expire by the end of October, 1997, petitioner ought to have been promoted as Officer JMGS-I as per the recommendation of the departmental committee and annulling the recommendation was arbitrary and illegal. Learned Counsel would submit that, on the appeal preferred by the petitioner having been rejected, the 2nd respondent ought to have referred the matter again to the departmental committee for its opinion as to the desirability of promoting the petitioner and that it was not open to the 2nd respondent to assume jurisdiction, conferred on the departmental promotion committee, and annul the recommendations. Learned Counsel would contend that denial of promotion is illegal inasmuch as the very penalty imposed on the petitioner does not disclose any major misconduct having been committed in terms of the Bipartite settlement.

Since the very applicability of the sealed cover procedure is in question, it is necessary to refer to the debarment policy, applicable in cases of promotion from Clerical cadre to Officers cadre, as prescribed in Circular No. PER/71/1983 dated 07.09.1983. The Annexure, to the said Circular, details the procedure to be followed while considering cases of promotion of Clerical staff under suspension, or against whom disciplinary proceedings are pending or are in progress or are contemplated.

Clause VI to VIII of the Circular dated 07.09.1983 read thus:

" VI. Where the disciplinary proceedings have ended with imposition of penalty specified in Clause 19.6 or Clause 19.8 of the First Bipartite Settlement, the recommendations of the Interviewing Committee kept in the sealed cover will not be given effect to.

VII. However, where the disciplinary proceedings have ended in imposition of penalty specified under Clause 19.6(b) or 19.8 (a&b) of the First Bipartite Settlement, the concerned employee will become eligible for promotion whenever promotions are considered after the conclusion of the disciplinary proceedings.

VIII. In case, where disciplinary proceedings end with imposition of the penalties specified at Clause 19.6(d) and Clause 19.8 (c) of the First Bipartite Settlement dated 19th

October 1966 and at para 3(i) a & b of the Third Bipartite Settlement dated 31st October 1979, the concerned employee will become eligible for promotion only after expiry of the penalty."

Under Clause VI, where the disciplinary proceedings end with imposition of penalty specified in clause 19.6 or Clause 19.8 of the Bipartite Settlement, the recommendations of the interviewing committee kept in the sealed cover would not be given effect to and under Clause VIII, in cases where the disciplinary proceedings end with imposition of a penaly specified at Clause 19.6 (d) of the Bipartite Settlement, the concerned employee will become eligible for promotion only after expiry of the period of penalty. In the present case, since the punishment imposed is, in effect, one of stoppage of five increments with cumulative effect, the petitioner would only have been eligible for promotion after expiry of the penalty period of five years from the date on which the punishment came into operation.

Sri G.Ramachandra Rao, learned Counsel for the petitioner, would submit that on the date on which the petitioner appeared for the interview, he had already been imposed the punishment of stoppage of five increments, by proceedings dated 31.10.1992, and it was only the appeal filed by him which was pending on that date. Learned Counsel would submit that since the sealed cover procedure is applicable only in cases where an employee is either under suspension or against whom disciplinary action is in progress or are contemplated, the said debarment policy would not apply to the case of the petitioner. Learned Counsel would place reliance on **Union of India Vs. K.V.Jankiraman** and **Union of India Vs. Dr. (Smt.) Sudha Salhan** in this regard.

In **Jankiraman** (17 supra) the Supreme Court held that it is only when a charge memo in disciplinary proceedings or a charge sheet in a criminal prosecution is issued to the employee, can it be said that departmental proceedings/criminal prosecution has been initiated against the employee, that the sealed cover procedure is to be resorted to only after the charge memo/charge sheet is issued, and that pendency of criminal investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. The Supreme Court held thus:-

"According to us, the Tribunal has erred in holding that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce

discipline and ensure purity in the administration. In the first instance, the penalty short of dismissal will vary from reduction in rank to censure. We are sure that the Tribunal has not intended that the promotion should be given to the officer from the original date even when the penalty imparted is of reduction in rank. On principle, for the same reasons, the officer cannot be rewarded by promotion as a matter of course even if the penalty is other than that of the reduction in rank. An employee has no right to promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion retrospectively from a date when for his conduct before that date he is penalized in praesenti. When an employee is held guilty and penalized and is, therefore, not promoted at least till the date on which he is penalized, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. If, further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion."

In **Dr. (Smt.) Sudha Salhan** (18 supra), the Supreme Court, following the earlier judgment in **Jankiraman** (17 supra), held that if on the date on which the name of a person is considered by a Departmental Promotion Committee for promotion to the higher post, such person is neither under suspension nor has any departmental proceedings been initiated against him, his name, if he is found meritorious and suitable, has to be brought on the select list and the "sealed cover procedure" cannot be adopted. The Supreme Court emphasized that recommendations of the Departmental Promotion Committee could be placed in a "sealed cover" only if, on the date of consideration of the name for promotion, departmental proceedings had been initiated or were pending or on its conclusion, final orders had not been passed by the appropriate authority and if the officer, against whom the departmental proceedings were initiated, is ultimately exonerated, the sealed cover containing the recommendation of the Departmental Promotion Committee would be opened, and the recommendation would be given effect to.

I find considerable force in the submission of Sri G.Ramachandra rao, learned Counsel for the Petitioner, that mere pendency of an appeal would not amount to

pendency of departmental proceedings inasmuch as the punishment had already been imposed prior thereto and it is the employee who had chosen to prefer an appeal against imposition of such punishment. Since departmental proceedings cannot be said to have been pending on the date on which the petitioner's candidature was considered by the Departmental Promotion committee, (date of interview i.e., 20.11.1996), adoption of the sealed cover procedure was not warranted and is against the conditions prescribed in the Annexure to the debarment policy enunciated in Circular No. PER/71/1983 dated 07.09.1983.

This however does not, in the facts and circumstances of the present case, enure to the benefit of the petitioner, since Clause VIII, of the said Annexure, is categorical that in cases where disciplinary proceedings end with imposition of penalties specified in Clause 19.6(d) of the Bipartite settlement, the concerned employee would be eligible for promotion only after expiry of the penalty period. Punishment imposed, on the petitioner, of stoppage of five increments with cumulative effect, was by order of the disciplinary authority dated 30.10.1992 and the five year penalty period expired only on 30.10.1997. In such circumstances, compliance with Clause VIII of the Debarment Policy, would require the petitioner's candidature not being considered for promotion in the selection process held pursuant to the Bank's Circular dated 12.06.1996. As held in **Jankiraman** (17 supra) to qualify for promotion the least that is expected of an employee is to have an unblemished record which is the minimum expected to ensure a clean and efficient administration and to protect public interest. When an employee is held guilty and penalized and is therefore not promoted, he cannot be said to have been subjected to a further penalty and denial of promotion in such circumstances is but a necessary consequence of his conduct. In the case on hand, the petitioner was imposed penalty, of stoppage of five increment, by order 31.10.1992, and would have been entitled to be considered for promotion, to the Officer Cadre in JMGS-I, only after expiry of the five year period i.e., on or after 30.10.1997, both in terms of the debarment policy in Circular No. PER/71/1983 dated 07.09.1983 and the law laid down by the Supreme Court in **Jankiraman** (17 supra). While the respondents may not have been justified in resorting to the sealed cover procedure, in terms of the debarment policy, the petitioner's candidature ought not to have been considered at all, let alone considered and the result placed in a sealed cover. I am unable to

agree with the submission of Sri G.Ramachandrarao, learned Counsel for the petitioner, that the petitioner ought to have been promoted along with others in November 1996 and the punishment of stoppage of five increments should have been effected in the promoted cadre of Officer JMGS-I. As held in **Jankiraman** (17 supra), a person, who has been punished for proved acts of misconduct, cannot seek promotion, during the currency of the period of penalty, since his entire service record is to be examined for the purpose of promotion and currency of penalty would certainly disentitle such an employee from being promoted to a higher cadre. The contention, that the respondent ought not have taken a decision on his own accord and should have referred the matter to the Departmental Promotion Committee, cannot also be accepted. As the very consideration of the petitioner's case, for promotion to Officers Grade JMGS-I, was contrary to Clause VIII of the debarment policy and since the petitioner's case ought not to have been considered for promotion, in terms of the said policy, the Departmental Promotion Committee did not have jurisdiction to examine the petitioner's candidature for promotion and as a result the question of referring the petitioner's case to the Committee, to examine as to whether the punishment imposed on him would disentitle him for promotion, does not arise.

Sri G. Ramachandra Rao, learned Counsel for the petitioner, would however submit that even after the order of the Appellate Authority, dated 18.03.1997, confirming the order of the Disciplinary Authority, the petitioner has not been given the benefit of increments due to him on completion of the five year penalty period. Learned Counsel would also submit that the petitioner's candidature has also not been considered for promotion to Officers JMGS-I cadre during the period subsequent to 30.10.1997, on the erroneous assumption that the five year penalty period would run only from the date of the appellate authority's order dated 18.03.1997, upto 17.03.2002. I find considerable force in this submission. The order of the disciplinary authority dated 31.10.1992 would come into force from the date on which the said order was passed and communicated. Pendency of the appeal, in the absence of the order of the disciplinary authority being suspended, cannot be said to have resulted in a situation where the order of punishment has not been given effect to. The five year penalty period which commenced from 31.10.1992 ended by 30.10.1997, and on or after 31.10.1997 the petitioner ought to have been paid the annual increments which arose thereafter and should also have been considered for promotion to the higher grade of Officers JMGS-I, provided he had not suffered any

other punishment. It is not in dispute that the petitioner has not been paid his increments, which fell due after 31.10.1997, even as on date. W.P.M.P.No.4722 of 2004 in W.P.No.28763 of 1997 has been filed by the petitioner seeking payment of annual increments from the year 1998.

There shall therefore be a direction to the respondents to pay the annual increments, which fell due from the year 1998 onwards, to the petitioner within three months from the date of receipt of a copy of this order, in case the petitioner has not been imposed any other penalty which would disentitle him from being paid these increments. Non-consideration of the petitioner's candidature for promotion to Officers JMGS Grade-I, in selections made after 31.10.1997, would also be illegal and contrary to the debarment policy. There shall also be a direction to the respondents, in case any selections were effected, to the posts of JMGS Grade-I, and candidates junior to the petitioner were considered and promoted to the said post after 31.10.1997, to consider the case of the petitioner, and in case he is found eligible and suitable to hold the post of Officers JMGS Grade-I to promote him to the said post along with his juniors who may have been promoted as Officers JMGS-I after 31.10.1997. Consideration of the petitioner's case, for promotion to Officers JMGS Grade-I, by a duly constituted Departmental Promotion Committee, in accordance with the aforesaid directions, shall be completed within a period of four months from the date of receipt of a copy of this order.

In the result, W.P.No.29418 of 1997 is dismissed and W.P.No.28763 of 1997 is disposed of. There shall however be no order as to costs.

Date: .10.2005 _____

RAMESH RANGANATHAN, J

Note:

L.R copy be marked

B/o

MRKR/ASP